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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,830	08/25/2003	Steven A. Melman	47981.101	1350
37752	7590	11/09/2005		
EPSTEIN BECKER & GREEN, P.C. 1227 25TH STREET, N.W. 7TH FLOOR WASHINGTON, DC 20037			EXAMINER ROBERTS, LEZAH	
			ART UNIT	PAPER NUMBER
			1614	

DATE MAILED: 11/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/646,830	MELMAN, STEVEN A.	
	Examiner	Art Unit	
	Lezah W. Roberts	1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 16-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-15, drawn to a composition and dog treat containing said composition, classified in class 424, subclass 57.
- II. Claims 16-20, drawn to a method of treating or preventing a dental disease, classified in class 433, subclass 216 plus.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case invention I can be used to treat in hardened gelatin compositions or in food products.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, because of their recognized divergent subject matter, and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise

include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP § 821.04. **Process claims that depend from or otherwise include all the limitations of the patentable product** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103, and 112. Until an elected product claim is found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowed product claim will not be rejoined. See "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Brouwer* and 35 U.S.C. § 103(b)," 1184 O.G. 86 (March 26, 1996). Additionally, in order to retain the right to rejoinder in accordance with the above policy, Applicant is advised that the process claims should be amended during prosecution either to maintain dependency on the product claims or to otherwise include the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply

Art Unit: 1614

where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

During a telephone conversation with Corinne Marie Pouliquen on October 19, 2005, a provisional election was made with traverse to prosecute the invention of I, claims 1-15. Affirmation of this election must be made by applicant in replying to this Office action. Claims 16-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claims

Rejections, Anticipation

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1) Claims 1, 3 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Montgomery (US 6,074,662).

Art Unit: 1614

Montgomery teaches animal chews made of rawhide having antimicrobial properties (column 2, lines 58-65). The chews are coated, as recited in claim 6 with cationic antimicrobials and alkali metal salts (column 3, lines 5-13). One of the alkali metal salts specifically named, as having utility in this invention, is an acetic acid salt, as recited in the instant claims (column 3, lines 25-27). The reference clearly anticipates the use of acetic acid salts on dog chews made of rawhide as recited by the instant claims.

2) Claim 1 rejected under 35 U.S.C. 102(b) as being anticipated by Spanier (US 4,904,495).

Spanier teaches chewy dog snacks that contain one or more acidulants (column 4, lines 52-68). One of the preferred acidulants is acetic acid, as recited by the disclosed claims (see claim 18). The reference clearly anticipates the use of acetic acid in dog snacks or treat as recited by the instant claim.

3) Claims 8-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Prencipe et al. (US 5,256,402).

Prencipe et al. teaches abrasive tooth whitening dentifrices including toothpastes, gels, and powders, as recited in claim 9. Pyrophosphate salts such as sodium hexametaphosphate are used for their anti-tartar efficacy in the dentifrice compositions with a composition of 0.5 to 8.0 % by weight. The compositions also include acidulating agents such as acetic acid with a composition of 0.1 to 6.0 % by weight of the composition. These components encompass what is recited in claims 8, 10 and 11. The dental compositions further include fluorine-providing compounds

Art Unit: 1614

(column 6, lines 3-6); coloring agents (column 6, line 41-47); flavoring agents (column 5, lines 22-27) and abrasive agents (column 4, lines 27-31), as recited in claims 12-15.

The reference dental clearly anticipates the composition of the instant claims.

Rejections, Obviousness

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1) Claim 1, 5, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asami et al. (US 5,460,802) in view of Axelrod (US 4,924,811).

Asami et al. teaches an oral composition as an oral disinfectant for companion animals. This encompasses treating the animal's teeth and oral cavity tissues (column 2, lines 47-50). The composition may include acetic acid, acidic sodium hexametaphosphate, salts thereof, or mixtures thereof (column 2, lines 55-61), as

recited by the instant claims. The primary reference differs from the instant claims insofar as to not disclose the composition in a dog treat, toy or chew.

Axelrod teaches a nylon rope with untwisted tassels that are pulled between a dog's teeth in the manner of dental floss (see abstract). The rope will be impregnated with flavor and scents that appeal to the dog (column 2, lines 30-33). The toy will remove plaque and tartar, which is formed between the dog's teeth. It will also divert the dog from destructive chewing behavior possibly involving its owner's personal property, while satisfying the dog's natural urge to chew (column 3, lines 27-35). The secondary reference differs from the instant claims insofar as to not disclose acetic acid or sodium hexametaphosphate being present on the rope.

It would have been obvious to one of ordinary skill in the art to have added the oral composition of the primary reference to the rope of the secondary reference motivated by the desire to deliver the oral composition to the animal with the least amount of resistance from the animal by satisfying the dog's natural urge to chew and being able to deliver the composition in between the teeth as well as the oral cavity as disclosed by the secondary reference.

2) Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Asami et al. in view of Axelrod (6,093,427).

The primary reference is as stated above. The reference differs from the instant claim insofar as to not disclose the oral composition in a vegetable chew.

Axelrod teaches vegetable-based dog chews. Most dogs enjoy chewing on various items, and many are especially attracted to animal bones and animal-derived

Art Unit: 1614

chew toys. However, bones and many animal-derived chew toys can pose a hazard to a dog in that any splinters or large pieces that are swallowed may become impaled or may otherwise obstruct the digestive tract. The vegetable dog chew taught by the reference is easily digestible, supplies nutrients to the dog and is composed completely of natural ingredients (column 1). The reference differs from the instant claims insofar as to not disclose the dog chews contain acetic acid.

It would have been obvious to one of ordinary skill in the art to have incorporated the oral composition of the primary reference into the vegetable chew of the secondary reference motivated by the desire to have cleaned the dog's teeth as well as provided nutrients to the dog in a vehicle providing an activity dogs enjoy doing such as chewing as disclosed by the secondary reference.

3) Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Asami et al. in view of Axelrod (US 3,871,334).

The primary reference is as stated above. The reference differs from the instant claim insofar as to not disclose the oral composition in a nylon bone.

Axelrod teaches a bone that can be molded out of a nylon polymer, which contains permanent odor and flavoring. The nylon provides a substrate that exhibits surface roughening upon being chewed. The chewing action actually produces short tufts or frizzles of material projecting from the surface of the bone. As the dog chews into the bone its teeth sink into the frizzle and the teeth are cleaned by a scouring action of the frizzle. The thickness and location of the frizzle on the surface of the bone varies with the particular animal and its chewing habits (column 3, lines 1-15). The

Art Unit: 1614

reference differs insofar as to not disclose that acetic acid was contained in or on the nylon bone.

It would have been obvious to one of ordinary skill in the art to have incorporated the oral composition of the primary reference into the bone of the secondary reference motivated by the desire to apply an antimicrobial cleaning activity of the composition to the scouring activity of chewing the bone to provide an overall cleaning of the dog's oral cavity as well as satisfying the dog's chewing habit as well as providing a more attractive delivery method of the composition to the animal as disclosed by the secondary reference.

Claims 1-15 are rejected.

No claims allowed.

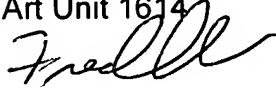
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lezah W. Roberts whose telephone number is 571-272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1614

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frederick Krass
Primary Examiner
Art Unit 1614



Lezah Roberts
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